

ORIGINAL

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FILED
OCT 21 2004
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 COMMODITY FUTURES TRADING)
13 COMMISSION,)
14)
15 Plaintiff,)
16 vs.)
17 WHITE PINE TRUST CORPORATION, a)
18 California corporation, and RICHARD)
19 MATTHEWS, an individual,)
20)
21 Defendants)
22)

Case No.
Ex Parte Statutory Restraining Order, Order
Permitting Expedited Discovery, the
Appointment of a Receiver, and Other
Equitable Relief

23 This matter came on for hearing on October 20, 2004 on the Motion without notice of
24 Plaintiff Commodity Futures Trading Commission (the "Commission" or "Plaintiff") for an *ex*
25 *parte*: (1) Statutory Restraining Order; (2) Order Permitting Immediate Expedited Discovery; and
26 (3) Order to Show Cause re: Preliminary Injunction (the "Application"). The Court, having
27 considered the Commission's Complaint, Motion, Memorandum of Points and Authorities,
28

1 Exhibits, other materials, all other evidence presented by Plaintiff filed herein, and having heard the
2 arguments of Plaintiff's counsel, finds that:

3 1. This Court has jurisdiction over the parties and over the subject matter of this action
4 pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act") 7 U.S.C. § 13a-1
5 (2001).
6

7 2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7
8 U.S.C. § 13a-1(e) (2001). There is good cause to believe that the Defendants have engaged, are
9 engaging and are about to engage in acts and practices constituting violations of the Act, 7 U.S.C.
10 §§ 1, *et seq.* (2001).
11

12 3. There is good cause to believe that immediate and irreparable damage to the Court's
13 ability to grant effective final relief for investors in the form of monetary redress will occur from the
14 sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants
15 are immediately restrained and enjoined by Order of this Court.

16 4. Good cause exists for the freezing of Defendants' assets and for entry of an order
17 prohibiting Defendants from destroying records and denying agents of the Commission access to
18 inspect and copy records.
19

20 5. Good cause exists to permit discovery before the early meeting of counsel
21 pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

22 6. Pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure, immediate
23 depositions are consistent with the principles of Rule 26(b)(2) of the Federal Rules of Civil
24 Procedure.
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26 7. Weighing the equities and considering the Commission's likelihood of success in its
27 claims for relief, the issuance of a statutory restraining order is in the public interest.
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DEFINITIONS

For the purposes of this Order, the following definitions apply:

8. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

9. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

10. "Defendants" means White Pine Trust Corporation/ Pinnacle Capital Fund ("White Pine"), Richard R. Matthews, Jr. ("Matthews"), and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of White Pine or Matthews, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with White Pine or Matthews

RELIEF GRANTED

I.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that

11. Defendants are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of White Pine or Richard R. Matthews Jr., wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

12. Defendants, and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of White Pine or Richard R. Matthews, Jr., wherever located, including assets held outside the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this Order.

13. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendants.

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II.

DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of the Defendants, or has held, controlled, or maintained custody of any account or asset of the Defendants at any time since July 1, 2000, shall:

14. Prohibit Defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

15. Deny Defendants and all other persons access to any safe deposit box that is: (a) titled in the name of the Defendants either individually or jointly; or (b) otherwise subject to access by the Defendants;

16. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit, of the Defendants; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject to access by the Defendants; and

17. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not

1 limited to, originals or copies of account applications, account statements, signature cards,
2 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit
3 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

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5 **III.**

6 **ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS**

7 **IT IS FURTHER ORDERED** that within five (5) business days following the service of
8 this Order, Defendants shall:

9 18. Provide the Commission with a full accounting of all funds, documents, and
10 assets, including those outside of the United States, that are held by them, for their benefit, or
11 under their direct or indirect control, whether jointly or singly;

12 19. Transfer to the territory of the United States all funds, documents, and assets
13 located in foreign countries which are held by them, for their benefit, or under their direct or
14 indirect control, whether jointly or singly; and

15 20. Provide the Commission access to all records of the defendants held by financial
16 institutions located outside the territorial United States by signing the Consent to Release of
17 Financial Records attached to this Order.
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20 **IV.**

21 **MAINTENANCE OF BUSINESS RECORDS**

22 **IT IS FURTHER ORDERED** that:

23 21. Defendants and all persons or entities who receive notice of this Order by personal
24 service or otherwise, are restrained and enjoined from directly or indirectly destroying,
25 mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any
26 documents that relate to the business practices or business or personal finances of the
27 Defendants.
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V.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

22. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendants and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the person of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

23. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of the Defendants, wherever such books and records may be situated.

VI.

BOND NOT REQUIRED OF PLAINTIFF

IT IS FURTHER ORDERED that:

24. Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

VII.

ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED that:

25. Defendant shall appear before this Court on the 28 day of October 2004, at 3:30 p.m., before the United States District Judge John Houston at the United States Courthouse for the Southern District of California, San Diego Division, to show cause, if there be any, why an

1 Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and
2 why the other relief requested should not be granted pending trial on the merits of this action.

3 26. Should any party wish to file a memorandum of law or other papers in opposition
4 to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before
5 October 26, 2004 and served no later than October 26, 2004.
6

7 **VIII.**

8 **ORDER PERMITTING EXPEDITED DISCOVERY**

9 **IT IS FURTHER ORDERED** that:

10 27. The prohibition upon discovery before the early meeting of counsel is removed
11 pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

12 28. The prohibition upon the immediate commencement of depositions is removed
13 pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

14 29. The parties may proceed to take the oral deposition of any person upon three
15 calendar days actual notice if the notice is served upon the parties personally or by telecopier to
16 the party's last known business telecopier number.
17

18 30. The parties may take the deposition of any person for the sole purpose of
19 discovering the nature, location, status and extent of assets of the defendants and the location of
20 any documents reflecting those assets.
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22 **TEMPORARY RECEIVER**

23 **IX.**

24 31. **IT IS FURTHER ORDERED** that Robb Evans & Associates LLC is appointed
25 temporary Receiver for the defendants and any affiliates or subsidiaries of defendants White Pine
26 and Matthews, with the full powers of an equity receiver. The Receiver shall be the agent of this
27 Court in acting as Receiver under this Order.
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2 32. **IT IS FURTHER ORDERED** that the Receiver is directed and authorized to
3 accomplish the following:

- 4 A. Assume full control of White Pine by removing any officer, independent
5 contractor, employee, or agent of the defendants, from control and management of
6 the affairs of White Pine;
- 7
8 B. Take exclusive custody, control, and possession of all the funds, property, mail
9 and other assets of, in the possession of, or under the control of the defendants,
10 wherever situated. The Receiver shall have full power to sue for, collect, receive
11 and take possession of all goods, chattels, rights, credits, moneys, effects, land,
12 leases, books, records, work papers, and records of accounts, including computer-
13 maintained information, and other papers and documents of the defendants,
14 including documents related to customers or clients whose interests are now held
15 by or under the direction, possession, custody or control of the defendants. The
16 Receiver shall have discretion to determine that certain personal property or other
17 assets of the defendants shall be under the Receiver's control, but shall remain in
18 the possession or custody of the defendants;
- 19
20 C. Take all steps necessary to secure the business premises of the defendants and any
21 and all other premises under the control of the defendants;
- 22
23 D. Preserve, hold and manage all receivership assets, and perform all acts necessary
24 to preserve the value of those assets, in order to prevent any loss, damage or injury
25 to customers or clients;
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27 E. Prevent the withdrawal or misapplication of funds entrusted to the defendants, and
28 otherwise protect the interests of customers or clients;

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- F. Manage and administer the defendants by performing all acts incidental thereto that the receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;
- G. Collect all money owed to the defendants;
- H. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the defendants or to carry out his or her duties pursuant to this Order;
- I. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- J. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
- K. Open one or more bank accounts as designated depositories for funds of the defendants. The Receiver shall deposit all funds of the defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and
- L. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the defendants.

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X.

SERVICE OF ORDER

IT IS FURTHER ORDERED that:

33. This Order shall be served on Defendants by personal service consistent with Federal Rule of Civil Procedure Rule 4(e). All subsequent pleadings, correspondence, notices required by this Order, and other materials be served consistent with Federal Rule of Civil Procedure Rule 4.

XI.

FORCE AND EFFECT

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at San Diego, California on this 21st day of October 2004 at ____.

UNITED STATES DISTRICT JUDGE